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FISCAL IMPACT STATEMENT

LS 7108 | **NOTE PREPARED:** Mar 1, 2006
BILL NUMBER: HB 1008 | **BILL AMENDED:** Mar 1, 2006

SUBJECT: Public-Private Agreements for Transportation.

FIRST AUTHOR: Rep. Borror | **BILL STATUS:** 2nd Reading - 2nd House
FIRST SPONSOR: Sen. Meeks

FUNDS AFFECTED: X GENERAL | **IMPACT:** State & Local
X DEDICATED
X FEDERAL

Summary of Legislation: (Amended) This bill has the following provisions.

Public Employees' Retirement: The bill establishes a process to withdraw state employees from the Public Employees' Retirement Fund (PERF) and allow certain state employees to retire when the employees' particular departmental, occupational, or other classifications are terminated from state employment as a result of: (1) a lease or other transfer of state property to a nongovernmental entity; or (2) a contractual arrangement with a nongovernmental entity to perform certain state functions.

Income Tax Credit for Tolls: It establishes a refundable income tax credit for tolls paid by individuals for use of the Indiana Toll Road for a nonbusiness purpose. It provides that the amount of the credit is the lesser of one-half of the tolls paid or $300.

Public-Private Agreements: The bill amends the current laws concerning toll roads and adds new provisions to authorize the Indiana Finance Authority (IFA) to enter into public-private agreements with private entities (operators) concerning toll road projects. It imposes certain conditions on the ability of the IFA to enter into a public-private agreement after August 1, 2006, if the agreement would authorize the imposition of tolls.

The bill provides that a public-private agreement may be for any combination of the planning, acquisition, construction, improvement, extension, operation, repair, maintenance, and financing of projects. It also provides that a public-private agreement is subject to the approval of the Governor after review by the Budget Committee.

The bill establishes procedures for selection of operators by the authority.

Toll Rate Setting: The bill permits the IFA to establish user fees and tolls under a public-private agreement, including maximum tolls and user fees and criteria for the adjustment of those maximums.

Moral Obligation: It provides that, with the approval of the Budget Director after review by the Budget Committee, a public-private agreement may include a moral obligation of the state to pay certain costs incurred under the agreement.

Electronic Toll Collection Systems: The bill provides that a public-private agreement may include provisions concerning electronic toll collection systems and photo- or video-based toll collection enforcement systems.

User Fees and Enforcement Procedures: It authorizes the IFA to adopt emergency rules concerning user fees under a public-private agreement and enforcement procedures and assessments for failure to pay required tolls, including electronic and photo- or video-based collection enforcement.

Northwest Indiana Regional Development Authority Payments: It deletes the requirement for certain payments to the Northwest Indiana Regional Development Authority (NIRDA) from toll road revenues or the state General Fund.

Property Tax Exemption: The bill provides that property leased or acquired by an operator for a public-private project is exempt from property taxes.

Income Tax: The bill provides that an operator's income from a public-private agreement is subject to taxation in the same manner as income received by other private entities.

Use of Toll Road Revenues: The bill provides that revenues from a public-private agreement with respect to a toll road shall be deposited in the Toll Road Fund and used to:

(1) retire certain outstanding bonds;
(2) pay amounts owed by the authority with respect to a public-private agreement; and
(3) distribute $400 M to the Next Generation Trust Fund.

The bill provides that the remaining money in the Toll Road Fund is to be distributed to the Major Moves Construction Fund.

Major Moves Construction Fund: It establishes the Major Moves Construction Fund and provides for distributions from that fund for various purposes to cities, towns, counties, the NIRDA, the Indiana Department of Transportation (INDOT), and the state General Fund.

It also permits the Budget Agency, after Budget Committee review, to augment distributions from the Major Moves Construction Fund to INDOT.

The bill provides that the total amount of distributions from the Major Moves Construction Fund for projects or purposes that benefit a county traversed by the Indiana Toll Road may not be less than 34% of the money received by the IFA under a public-private agreement concerning the Indiana Toll Road. It provides that the Budget Agency is responsible for determining the amount necessary to comply with the 34% requirement.

Next Generation Trust Fund: The bill establishes the Next Generation Trust Fund and provides for distributions to the Major Moves Construction Fund after the balance in the Trust Fund reaches $1.0 B.

Prohibited Political Contributions: It prohibits the operator under a public-private agreement or a person having at least a 1% interest in the operator from making political contributions to state, local, or legislative candidates or certain political committees.

Toll Road Routes and Conversion: It provides that the route of certain toll road or tollway projects may not terminate in certain townships. It also provides that INDOT may not convert a state highway to a toll road or a tollway unless the General Assembly adopts a statute approving the conversion.

Technical Corrections: It makes technical corrections and conforming amendments.

Effective Date: Upon passage; December 31, 2005 (retroactive); July 1, 2006.

Explanation of State Expenditures: *Public-Private Agreements:* The bill authorizes public-private agreements for toll road projects (including the existing Indiana Toll Road). Positive fiscal impact will occur if the lease of a state asset garners more money than the long-term net revenues generated by the asset. Also, if the state transfers risk to another party for which the state would have to pay a premium or that has high probability for additional costs, the state could benefit from these public-private agreements. If the state accepts funds today in place of future revenues, the state loses the future income and the flexibility to accept new projects using that income.

Background on the IFA: The Indiana Finance Authority (IFA) is a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions.

Under current law, the IFA may construct, maintain, repair, police, and operate toll road projects in Indiana. In order to secure funds for these functions, the IFA may issue toll road revenue bonds of the state. Toll road revenue bonds do not constitute a debt of the state or of any political subdivision and are payable solely from the funds pledged for their payment or from an allocation of money from the Rural Transportation Road Fund, which is administered by the IFA.

The IFA is allowed, under current law, to contract with or lease to INDOT for construction, reconstruction, improvements, maintenance or repairs, or operation of toll projects or toll bridges. The statute also allows for the IFA to determine under IC 8-23-7 that a toll road project constructed or operated by the authority should become a part of the system of state highways free of tolls or become a tollway.

(Revised) *Background on Public-Private Agreements for Toll Road Projects:* After August 1, 2006, the IFA or INDOT may not issue a request for proposal or enter into a public-private agreement that would impose tolls without the General Assembly adopting a statute that allows the imposition of tolls. The bill requires the IFA to issue a request for proposal that must be published in accordance with IC 5-3-1. The IFA may negotiate with the responsible offerors in confidence and after receiving final offers make a preliminary selection or terminate the process. The bill establishes criteria for determining whether an offeror is capable of being selected for a public-private agreement. If a preliminary selection is made, the IFA must hold a public hearing and provide a written explanation of the basis for the selection at least 7 days before the public hearing. After these procedures are complete, the IFA may select the preliminary offeror as the operator.

The public-private agreement must be reviewed by the State Budget Committee and approved by the Governor prior to its execution. The public-private agreement may not exceed 75 years. It must contain either provisions for lease, franchise, or license of the toll road project or for management agreements or contracts to operate the toll road project. All real property and improvements must be owned by the IFA. The agreement must allow for monitoring maintenance practices and provide for corrective action. The agreement must establish the basis on which user fees may be collected by the operator. Also required are provisions that require compliance with state and federal laws and local ordinances, the grounds for termination, and the procedures for amendment. In addition, some of the other provisions that may be inserted in the agreement include review and approval of the operator's plans for development and operation, inspection of construction or improvements, the filing of appropriate financial statements by the operator, and financing obligations of the operator and the IFA.

The bill allows the operator to finance its obligation by issuing debt, equity, or other securities, entering into sale and leaseback transactions, and securing financing with a pledge of, security interest in, or lien on any user fees charged and collected for use of the toll road. Obligations issued shall not be considered to constitute a debt of the state or a political subdivision or a pledge of the faith and credit of the state or political subdivision.

For construction, the operator would not have to comply with state laws concerning public works or public works by state agencies, but would have to comply with provisions concerning minority business enterprises and women's business enterprises and, if specified in the public-private agreement, award contracts to Indiana businesses.

The bill would allow the IFA to fix user fees and establish maximum amounts and provide for increases and decreases based on indices, methodologies, or other factors selected by IFA. The bill also allows the IFA to pay any amount owed by the IFA under a public-private agreement. Subject to the review of the Budget Committee and approval of the Budget Director, a public-private agreement may establish a procedure for the IFA or a representative to certify to the General Assembly the amount needed to pay the amounts owed under the public-private agreement or otherwise create a moral obligation of the state to pay any amounts owed. Bonds issued under this section do not require the approvals required of other bonds issued by IFA.

The bill allows the IFA, the operator, and the Indiana State Police (ISP) to enter into an agreement to provide law enforcement and between the IFA and ISP related to the costs incurred to provide law enforcement.

<u>Background on the Indiana Toll Road</u> - The IFA leases the toll road to INDOT to operate and maintain the road in an efficient and economical manner, as allowed under current law. INDOT created a special Toll Road District to keep its work on the Toll Road separate from other state functions. The Indiana East-West Toll Road Project (Toll Road Project) - an accounting entity - pays rent to the IFA to meet its debt service. Once operating expenses, major expense fund requirements, and base rent are paid, any excess income is paid to IFA as additional rent. Revenues of the Toll Road Project are derived from tolls collected, rent payments from concessionaires, and investment income. Operating expenses are general administration, toll collection, road operations, various services including patrol services, major expense repairs and renovations, and depreciation expense. The following table shows operating results from the Toll Road Project from FY 1999 through FY 2005.

Operating Revenues and Expenses Indiana East-West Toll Road Project (In Millions)							
	FY 1999[a]	FY 2000[a]	FY 2001[a]	FY 2002[a]	FY 2003[a]	FY 2004[b]	FY 2005[b]
Operating Revenue							
Toll Receipts	$81.6	$84.8	$81.3	$82.5	$82.0	$85.1	$88.0
Concessionaire Rent	5.3	7.0	6.5	5.9	6.5	7.0	7.0
Other	1.1	1.1	0.7	0.9	0.5	0.6	0.8
Total Revenue	**88.0**	**92.9**	**88.5**	**89.3**	**89.0**	**92.7**	**95.8**
Operating Expenses							
Depreciation	10.1	10.4	11.1	3.4	3.1	3.1	3.6
Other Expenses	44.7	40.8	34.3	64.9	70.0	57.3	67.9
Total Operating Expenses	**54.8**	**51.2**	**45.4**	**68.3**	**73.1**	**60.4**	**71.5**
Nonoperating Income (Expense)	(14.0)	(10.0)	(8.1)	(12.6)	(15.0)	(13.9)	(12.6)
Net Income (Loss)	**$19.2**	**$31.7**	**$35.0**	**$8.4**	**$0.9**	**$18.4**	**$11.7**
[a]*State of Indiana Comprehensive Annual Financial Report* for the fiscal year. [b]*Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.*							

The cash flow statement provides information about changes in cash from the operating, financing, and investing activities of the entity. The total cash flow between FY 1999 and FY 2005 is $48.9 M, with operating activity providing positive cash flow each year. In five years of this seven-year period, the overall cash flow has been negative due to financing and investing activity.

Cash Flow Statement Indiana East-West Toll Road Project (In Millions)							
Cash Flow from ...	FY 1999[a]	FY 2000[a]	FY 2001[a]	FY 2002[a]	FY 2003[a]	FY 2004[b]	FY 2005[b]
Operating Activity	$36.1	$53.6	$52.0	$26.6	$20.2	$35.8	$28.4
Financing Activity	(38.2)	(55.8)	(52.7)	(25.2)	(33.3)	(45.7)	(47.1)
Investing Activity	(12.9)	88.5	(34.1)	84.8	(27.7)	(6.9)	2.5
Total	**($15.0)**	**$86.3**	**($34.8)**	**86.2**	**(40.8)**	**(16.8)**	**(16.2)**
[a]*State of Indiana Comprehensive Annual Financial Report* for the fiscal year. [b]*Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.*							

The Annual Report indicates that 91% of the Toll Road Project's lane miles were rated in good or better condition and 100% of the Toll Road Project's bridges were rated in good or better condition. None of the bridges were rated as substandard. The INDOT standard for road quality is 85% of the roads in good or better condition and for bridges the standard quality is that less than 1% of the bridges are rated as substandard.

Background on Revenue Bonds Issued by IFA - To date, bonds issued by the IFA have been revenue bonds, secured by the revenues generated from tolls. However, the lease agreement between IFA and INDOT dated September 1, 1985, states:

> If there still remains a deficit in Revenues….then the Department within 30 days will promptly report and request approval of the Transportation Coordinating Board and the State Budget Agency for the submission of a bill either as a part of or as an amendment to the budget bill providing an appropriation by the General Assembly to the Department of funds for the purpose of and in amounts sufficient to pay the obligations of the Department under this Lease…

It is understood that this lease language and other language in the covenants of the revenue bonds that the revenue bonds could represent a moral obligation of the state. The state has risk to the extent that the Toll Road Project would fail to earn sufficient revenue to pay the debt service and a default on outstanding bonds would affect the state's bond rating. Any additional bonds that the IFA may issue for road construction projects may establish the same sort of moral obligation and expose the state to this risk of financial responsibility.

Net Present Value - The bill would allow the IFA to receive a one-time payment in the present instead of collecting a stream of net income over a period of time up to 75 years. Positive fiscal impact would occur if the present value of the Toll Road lease is over and above the present value of the stream of net revenues that would otherwise have been received. Reasons that an offeror would pay more than the stream of cash flows include (1) the offeror can operate the Toll Road Project at a lower cost than the state, (2) the offeror can charge fees that are higher than the state would have charged, or (3) the offeror is willing to pay a premium for the rights to operate the Toll Road.

Conversely, the offeror may offer less because the costs to the offeror are higher than they are for the state. For example, the offeror's costs will include applicable taxes (see *Explanation of State Revenues*) and a profit for shareholders. These net cash flows will be discounted by the average investment rate of the offeror which could be higher or lower than the state's rate of investment.

The state recently proposed rules to raise the Toll Road tolls which will result in more revenue for the Toll Road Project. To the extent that costs remain constant, the future net income of the Toll Road Project could increase. However, the toll increase is based on the need for improvements to the Toll Road Project which will increase construction costs.

The calculation of the net present value of the project to the state and to an offeror requires management and engineering expertise to determine future costs for maintenance and improvements.

Northwest Indiana Regional Development Authority (NIRDA) Payments: Under current law, the IFA is required to make payments between $5.0 M and $10.0 M in CY 2006 and CY 2007 to NIRDA in equal quarterly payments. If the Toll Road is leased or sold before January 1, 2008, the State Treasurer, in CY 2007, is required to make a payment of $20.0 M minus any payment already made. The payment would come from the state General Fund. As of December 2005, the IFA approved a $10 M allocation to NIRDA in 2006 from the Toll Road General Reserve Fund. Payments required under current law to NIRDA are deleted by the bill. Under the bill, if the Toll Road is sold or leased before January 1, 2008, NIRDA would receive an amount, if any, appropriated by the General Assembly. Under the bill, a payment to NIRDA is to be made from the Major Moves Constructions Fund (see below).

User Fees and Enforcement Procedures: The bill exempts IFA from some of the requirements of rule making procedures including public notices and hearings, a one-year completion time, small business provisions, and approval from the Attorney General and the Governor. Also, the bill makes rules adopted by the IFA expire at the date set by the IFA. It is expected that making emergency rules will incur minimal additional administrative costs for the IFA.

Background on Enforcement Procedures: By establishing enforcement procedures for nonpayment of tolls, the bill clears the way for use of electronic toll collection devices. Currently, the Toll Road operates as a closed barrier system between miles 1 and 23, and as a closed ticket toll collection system between miles 24 and 153. The Toll Road has computerized collection equipment and has begun to establish infrastructure to move towards an electronic system. Using electronic technology could reduce the number of toll collectors needed and reduce maintenance and operation costs for toll collection stations.

Prohibited Political Contributions: There are no data available to indicate how many offenders may be convicted of knowingly or intentionally making a contribution to a candidate or a committee in the term during which the operator is a party to a public-private agreement or three years after the final expiration or termination of the agreement. A Class D felony is created for toll road projects and for tollway projects.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was $20,977 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately $1,825 annually, or $5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Income Tax Credit for Tolls: The Department of State Revenue will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the new tax credit for tolls paid by an individual on the Indiana Toll Road. The Department's current level of resources should be sufficient to implement this change.

Public Employee Retirements: The ultimate impact of a process to withdraw state employees from PERF and to allow certain state employees to retire in certain circumstances will depend on administrative actions in terms of leasing or transferring state property to a nongovernmental entity or contracting with a nongovernmental entity to perform state functions and the number and specific situations of the employees involved. The bill permits any current state PERF member who is within 24 months of early or normal retirement and whose employment is terminated because of a lease or other transfer of state property to a nongovernmental entity, or a contractual arrangement with a nongovernmental entity, to have the remaining service purchased by the state to permit the member to qualify for immediate retirement. This provision would apply to all eligible members. The estimated fiscal impact for 100 such members is approximately $721,000 with a 30-year amortization of $55,500. [NOTE: These potential expenditures for 100 employees are proportional. That is, if each category has twice as many as illustrated, the fiscal impact would double as well.]

Besides the actuarial cost, there may also be additional administrative costs. These administrative costs would arise from the computation of benefits and the confirmation of credited service that may not have needed to be done under normal circumstances. Potential administrative costs are indeterminable at this time.

Funding Sources: The bill identifies the following funding sources for payments: (1) if the state receives monetary payments under a lease or contractual arrangement, the proceeds of the monetary payments received by the state; (2) if the state does not receive any monetary payments under a lease or contractual arrangement, any remaining appropriations made to the state department, agency, or other entity terminating the employees; and (3) if the sources described in parts 1 and 2 do not fully fund the amounts that the state is required to contribute to the fund, the PERF Board is to request that the General Assembly appropriate the amount necessary to fully fund the state's required contribution in the next state biennial budget.

Explanation of State Revenues: (Revised) An offer of $3.85 B was accepted by the IFA for a 75-year concession to operate the Indiana Toll Road. The terms and conditions of the Agreement between IFA and the concessionaire do not require ratification by the General Assembly.

This section provides information on the distribution of funds received from the Agreement and a summary of the Agreement.

(Revised) *Use of Revenues from Toll Road Revenues:* The bill establishes the Toll Road Fund consisting primarily of money received from an operator under a public-private agreement but that may include appropriations of the General Assembly. The purpose of the fund is to pay or defease certain bonds, pay amounts owed by the IFA in connection with a public-private agreement, and to make distributions to the Major Moves Construction Fund and the Next Generation Trust Fund. The Toll Road Fund may also be used to pay outstanding obligations related to Indiana Toll Road operations prior to a public-private agreement.

The money in the fund is allocated to one of three accounts within the Fund. The Bond Retirement Account contains the amount necessary to repay, defease, or otherwise retire bonds as determined by the IFA; the Administration Account is the amount necessary to pay amounts owed by IFA for performance of a public-private agreement; and the remaining money received during each state fiscal year is placed in the Eligible Project Account. Within 30 days after a public-private agreement concerning the Indiana Toll Road has been executed and closed, $400 M from the Eligible Project Account is distributed to the Next Generation Trust Fund and the remainder is distributed to the Major Moves Construction Fund (see below).

Background on Bonds Series Outstanding: Money received from a public-private agreement would be used to pay off bonds selected by IFA. The total outstanding balance on bonds issued for the Toll Road Project is currently valued at $198.7 M. IFA estimates that the penalties for early payments of bonds at about $4.0 M. The balance and payment schedule of the outstanding revenue bonds issued by IFA for the Toll Road Project are as follows.

Bond Issue	Long-term Liability June 30, 2004 (In Millions)	Long-term Liability June 30, 2005 (In Millions)
Series 1985	$26.2	$26.2
Series 1987	$43.2	$43.3
Series 1993	$18.0	$9.3
Series 1996	$121.6	$119.9
Total	**$209.0**	**$198.7**
Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.		

Revenue Bond Repayment Schedule Year-Ending June 30, (In Millions)							
	2006	**2007**	**2008**	**2009**	**2010**	**2011-2015**	**2016**
Principal	$13.7	$14.5	$15.4	$16.3	$17.1	$101.2	$26.2
Interest	11.3	10.5	9.5	8.5	7.7	22.5	0.8
Total	**$25.0**	**$25.0**	**$24.9**	**$24.8**	**$24.8**	**$123.7**	**$27.0**
Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.							

Potential Distribution of Revenues: Under the Agreement (see description below), a one-time payment of $3.85 B would be received at signing. Using the long-term liability balance for June 30, 2005, and the revenue bond principal repayment schedule for FY 2006, the amount of long-term liability is estimated to be $185.0 M at the time of closing, which would be placed in the Bond Retirement Account. It is also estimated that IFA will have projects to complete prior to closing that may cost $12.6 M, and IFA will have to make payments to Goldman Sachs for services on the Agreement with a preliminary estimate of $17.3 M. This would reserve at least $29.9 M for the Administration Account*. Of the remaining amount in the Eligible Projects Account, $400 M would be transferred to the Next Generation Trust Fund and $3.2 B would be available for the Major Moves Construction Fund.

*[*Note:* These amounts are based on the testimony received by the House Ways and Means Committee and information available in Schedule 4.1 of the Agreement. Additional costs that have not been identified could increase the amount placed in the Administration Account, including charges, costs, and expenses that are prorated between IFA and the concessionaire at the time of closing].

(Revised) *Next Generation Trust Fund:* The bill establishes the Next Generation Trust Fund (NGTF), a charitable trust to be used exclusively for the provision of highways, roads, and bridges for the benefit of the people of Indiana and the users of those facilities. The State Treasurer is the trustee of the NGTF which requires administering and managing the trust, investing the money of the trust, and depositing interest earned by the trust. The balance of the trust must reach $1.0 B before interest from the investments and a portion of the principal may be distributed to the Major Moves Construction Fund. Payments from the NGTF will include all accrued interest and $100 M of the principal or the remaining balance.

Investments: Given a 7% yield, assuming that the funds in the NGTF are invested by July 1, 2006, with simple compounding, the trust fund could begin making interest payments by 2020. If the yield is 5% or 3%, the fund would begin providing funds in 2025 or 2037, respectively.

Major Moves Construction Fund: The bill establishes the Major Moves Construction Fund (MMCF) which includes distributions from the Toll Road Fund (estimated at $3.2 B, see above) and from NGTF, appropriations to the fund, gifts, grants, loans, bond proceeds, interest, premiums, or other earnings. The MMCF is considered a trust fund and funds may not be transferred, assigned, or otherwise removed by the State Board of Finance, the Budget Agency, or any other state agency. INDOT will administer the fund to fund projects in the INDOT long-range plan, and to make distributions required by statute. The fund may also pay any obligations incurred by IFA, INDOT, or an operator in connection with the public-private agreement, pay lease payments to IFA, or make distributions to the State Treasurer for deposit in the State Highway Fund. Money in the Fund must be approved by the General Assembly to be available for expenditure.

(Revised) If IFA enters into a public-private agreement concerning the Indiana Toll Road, money in the fund will be distributed as follows:

(1) $150 M total to the Motor Vehicle Highway Account, with $75.0 M paid in each of FY 2007 and FY 2008, for distribution to each county, city, and town that is eligible for a distribution from the Account.
(2) $20 M to the NIRDA once NIRDA's comprehensive strategic development plan has been reviewed by the Budget Committee and approved by the Director of the Office of Management and Budget. Of the distribution, $10 M must be transferred to an airport authority carrying out an airport expansion project.
(3) $150 M total, with $30 M each to Steuben, LaGrange, LaPorte, Elkhart, and St. Joseph counties.
(4) $25 M to Porter County.
(5) $15 M to Lake County. Of the distribution, $5 M must be transferred to an airport authority carrying out an airport expansion project.
(6) $179 M to the State Highway Fund in FY 2007 for use by INDOT for preliminary engineering, purchase of rights of way, or construction of highways, roads, and bridges, and to study the feasibility of the use of creative financing methods. (The Budget Committee may review and the Budget Agency may augment this distribution.)
(7) An amount to reimburse the state General Fund for the loss of revenue due to the tax credit for tolls (see below).
(8) The amount sufficient to pay for public employee retirements (see above).

Tax Status for Toll Road Projects: The bill is not expected to change the revenues received from property tax related to property that is part of a toll road project. However, increases could occur from increases in Sales and Use Tax on tangible personal property that is purchased by the operator. Since the Toll Road is operated by a state agency, purchases are not currently subject to retail Sales or Use Tax. Based on past financial data, the IFA estimates an average of about $3.4 M a year in FY 2006 and FY 2007 in purchases that would be subject to the state's 6% Sales Tax. This would result in about $200,000 of additional revenue in those years. (Information is not available for other purchases for construction of infrastructure since some of these materials may be exempt from Sales Tax, similar to manufacturers' purchases of manufacturing inputs.)

Income Tax for Toll Road Operator: The bill provides that an operator's income from a public-private agreement is subject to taxation in the same manner as income received by other private entities. There are no data available to indicate how much would be collected.

Income Tax Credit for Tolls: The bill establishes a refundable Adjusted Gross Income (AGI) Tax credit for individuals for tolls paid to drive a two-axle vehicle, including a motorcycle, for nonbusiness purposes on the Indiana Toll Road. The credit is equal to the lesser of: (1) one-half of the amount of tolls paid by the individual during the taxable year; or (2) $300. The fiscal impact of this credit is outlined below.

(1) The revenue loss from credit claims by Indiana *residents* utilizing the Toll Road on a daily basis could potentially range from $2.1 M to $3.2 M in FY 2007 (one-half year impact) and $3.0 M to $4.5 M annually thereafter ending in FY 2018. This assumes there are approximately 10,000 to 15,000 individuals in this group.

(2) The potential fiscal impact from three other user groups is indeterminable. These groups are: (a) irregular or casual users of the Toll Road who are Indiana residents; (b) commuters from other states (primarily Illinois) who work in Indiana and use the Toll Road to commute to work; and (c) irregular or casual users of the Toll Road who are not Indiana residents.

The bill requires the state General Fund to be reimbursed for the revenue loss attributable to the tax credit from money in the Major Moves Construction Fund. The bill requires the reimbursement each fiscal year for the revenue loss arising during the preceding fiscal year. This reimbursement would begin in FY 2008 for revenue loss incurred in FY 2007.

Since the tax credit is refundable, a nonresident individual could claim the credit even if: (1) the individual does not earn income in Indiana during the taxable year that the tolls are paid; or (2) the individual earns income in Indiana but is not liable for AGI Tax pursuant to a reciprocal agreement between Indiana and the individual's state of residence (currently, this applies to residents of Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin).

The tax credit is effective beginning in tax year 2006 for tolls paid after June 30, 2006. The bill sunsets the tax credit after tax year 2017. As a result, the fiscal impact of the tax credit would begin in FY 2007 and end in FY 2018. The revenue from the individual AGI Tax is deposited in the state General Fund (86%) and the Property Tax Replacement Fund (14%).

The revenue loss estimate applicable to regular Toll Road users who are Indiana residents is based on INDOT estimates of average daily traffic volume on the Toll Road and of toll road revenue attributable to Indiana residents. INDOT's 2002 traffic volume report suggests that the average daily volume on the Toll Road is about 24,000 from Portage to the Eastpoint Barrier, and about 37,000 from Gary to the Westpoint Barrier. It is estimated that 8,000 Indiana residents could be using the Portage-Eastpoint Barrier span daily, and 12,000 Indiana residents could be using the Gary-Westpoint Barrier span daily. The estimated revenue loss is based on new toll schedules under the "Major Moves" Program and assumes that 50% to 75% of the estimated daily volume attributable to Indiana residents is from daily users of the Toll Road.

Prohibited Political Contributions: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is

$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the $120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Background on the Agreement Concerning the Indiana Toll Road: In October 2005, IFA issued a request for proposal to lease the Toll Road Project. There were 11 proposals submitted, 9 bidders considered, and 4 final bids. On January 23, 2006, the concessionaire, Statewide Mobility Partners LLC (SMP), was selected to operate the Toll Road Project. SMP is a consortium that includes Macquarie Bank, an Australian bank, and Cintra, a Spanish firm. The winning bid was $3.85 B, and the lease will last 75 years.

(Revised) The Agreement contains specific details of the deal, but does not require the ratification of the General Assembly. However, the Agreement indicates that the Indiana General Assembly has enacted Toll Road legislation that (1) does not contain any provision that is adverse to the Toll Road Operation or the concessionaire pursuant to the Agreement; (2) fully exempts the concessionaire from property taxes related to ownership of the Toll Road; (3) provides moral obligation of the state to provide funds for IFA to comply with payments required under the Agreement; and (4) expressly authorizes IFA to grant the concessionaire franchise and license to provide Toll Road services.

Some of the key points of the Agreement are summarized here. This description is in no way complete, but rather provides some of the details that may be important to legislators.

According to the offer document, the offer is secured by one or more letter(s) of credit in the aggregate amount of $75 M. Under the Agreement, the letter(s) of credit equal to 10% of the rent must be deposited to securitize the Agreement. If SMP does not execute the Agreement, the IFA may draw on the letter(s) and retain the amount. The offer also allows for adjustment of the offered amount by 0.10% ($3.85 M) for every one basis point change in the 10-year Treasury yield. This adjustment could increase or decrease the amount offered from January 19, 2006, until the day before execution of the Agreement.

Under the terms of the Agreement that will be signed on June 30, 2006, at the offices of Ice Miller LLP, the concessionaire will be granted an exclusive franchise and license to provide Toll Road services, including operating, managing, maintaining, rehabilitating, and tolling the Toll Road in exchange for a wire transfer of the amount of rent less any cash deposit previously paid in same-day funds. For federal and state tax purposes, the lease of the Toll Road is considered a sale.

The concessionaire is entitled to all tolls collected in accordance with a maximum toll schedule which is also part of the Agreement, and to revenues generated from vendors. Any revenues generated by other activities including mass transit facilities, permits, fees payable to the state, the sale of alcohol, the installation of utilities or similar services and safety measures, and the erection of billboards is the property of the state or IFA. When electronic tolling is established, the concessionaire will receive 50% of any fine collected for passing a toll gate without paying, a Class C infraction created by the bill. The concessionaire must use the revenue from tolls for debt service and operation and maintenance costs before making a distribution to any equity holders.

In addition to the rent, on closing day, the concessionaire will pay the Indiana State Police (ISP) $5.0 M for capital improvements and equipment including 50 vehicles and vehicle equipment. The concessionaire will also make equal quarterly payments to IFA totaling $6.0 M a year to reimburse ISP services. The concessionaire shall not hire private security services, and ISP must provide traffic law enforcement services on the Toll Road at the same level as it provides on state streets and roadways.

Under the Agreement, the concessionaire has the right to establish, collect, and enforce payment of tolls. The concessionaire must notify the IFA 90 days prior to implementation of any change and must raise rates in accordance with the schedule put forth in the Agreement. Notice to the public is required 60 days prior to implementation. The Agreement sets the maximum toll and through-trip rate per mile for Class 2 users through June 30, 2010, at $8.00, or a $0.0510 through-trip rate per mile. For other user classes, the maximum toll and through trip rate per mile will increase through June 30, 2010. Also, the maximum toll levels for all user classes for trips other than through trips is provided in the Agreement.

The concessionaire may increase the maximum toll level after June 30, 2010, by the initial applicable percentage toll increase. The initial increase is the greater of (A) 8.2%, (B) the percentage increase compounded annually of the Consumer Price Index - U.S. City Average for all Urban Consumers, All Items, not seasonally adjusted (CPI) or (C) the percentage increase compounded annually of the Per Capita Nominal Gross Domestic Product, in current dollars, not seasonally adjusted (GDP). These rates are measured for each year between 2006 and 2009. They are measured from January 1 to December 31.

After the initial increase in maximum toll levels, each year the maximum will increase by the greater of (A) 2.0%, (B) the percentage increase of the CPI, or (C) the percentage increase of the per capita nominal GDP. The percentage increase is measured from January 1 to December 31.

Historic Information on CPI and GDP - The following table shows the annual percentage change in CPI and GDP from 1976 to 2005. The CPI and GDP in the table most closely reflect the adjusting factors that will be used under the Agreement to adjust the maximum toll. These historic factors are compared in the table to the 2% base rate increase in the Agreement, and the percentage change that would have applied to increasing the maximum toll in a given year is checked. Over this 30-year historic period, the average percentage increase compounded annually in the maximum toll would have been 6.24%.

Historic Comparison of Increase in CPI and GDP with Minimum 2% Increase			
Year	**CPI**	**GDP**	**2%**
1976	4.86%	✓10.32%	2.00%
1977	6.70%	✓10.16%	2.00%
1978	9.02%	✓11.80%	2.00%
1979	✓13.29%	10.48%	2.00%
1980	✓12.52%	7.57%	2.00%
1981	8.92%	✓11.04%	2.00%
1982	✓3.83%	3.06%	2.00%
1983	3.79%	✓7.67%	2.00%
1984	3.95%	✓10.24%	2.00%
1985	3.80%	✓6.35%	2.00%
1986	1.10%	✓4.79%	2.00%
1987	4.43%	✓5.26%	2.00%
1988	4.42%	✓6.71%	2.00%
1989	4.65%	✓6.44%	2.00%
1990	✓6.11%	4.63%	2.00%
1991	✓3.06%	1.96%	2.00%
1992	2.90%	✓4.30%	2.00%
1993	2.75%	✓3.69%	2.00%
1994	2.67%	✓4.95%	2.00%
1995	2.54%	✓3.37%	2.00%
1996	3.32%	✓4.44%	2.00%
1997	1.70%	✓4.98%	2.00%
1998	1.61%	✓4.11%	2.00%
1999	2.68%	✓4.76%	2.00%
2000	3.39%	✓4.76%	2.00%
2001	1.55%	✓2.11%	2.00%
2002	✓2.38%	2.34%	2.00%
2003	1.88%	✓3.77%	2.00%
2004	3.26%	✓5.91%	2.00%
2005	3.42%	✓5.33%	2.00%

From the acceptance of the letter until the closing, IFA must operate the Toll Road in a manner consistent with past practices and to maintain goodwill. The concessionaire is accepting the Toll Road "As Is", since the concessionaire has inspected the Toll Road.

The concessionaire is responsible for all aspects of Toll Road operations and must cause the Toll Road to be operated in accordance with the Agreement and applicable laws. It must be open and operational 24 hours a day, every day. The concessionaire is subject to the right of IFA to monitor compliance with the Agreement to ensure the Toll Road is used and operated as required by the Agreement. The concessionaire may designate another person to be the operator, as long as IFA has received the required information and has given its approval.

Under the agreement, the concessionaire must provide, at its expense, the following mandatory expansion requirements: (1) Implement a barrier-controlled electronic toll collection within two years of closing; (2) by December 31, 2008, expansion to three lanes in each direction from mile 14.0 to mile 15.5; (3) by December 31, 2010, expansion to three lanes in each direction from mile 10.6 to mile 14.0 and lowering the Toll Road elevation to accommodate the flight path of Gary Chicago International Airport; and (4) by December 31, 2007, expansion to three travel lanes in each direction from mile 18.5 to mile 20.27.

The concessionaire may not do any thing that will create an encumbrance against the Toll Road. Further, if the concessionaire requests additional land for the purpose of an expansion (the building, erection, construction, installation, alteration, modification, or replacement of any structure, facility, or other improvement of any kind), it must seek the approval of IFA. If IFA approves, IFA completes the proceedings necessary to acquire or condemn the additional land. All costs of acquisition or condemnation are borne by the concessionaire.

The concessionaire must provide IFA with a written traffic study each year on or before July 1. The minimum level of service (LOS) that the concessionaire must maintain is LOS D in urban areas and LOS C for rural areas. The concessionaire is required to expand the Toll Road to maintain these levels, only to the extent that there is land available for expansion. If the IFA decides to acquire land so that an expansion may occur, then IFA is responsible for 50% of the costs incurred to acquire the land.

The concessionaire is also responsible for providing: (1) quarterly traffic characteristics reports including traffic forecasts for the upcoming three months, current LOS, and actual traffic counts; (2) incident management notifications and reports; (3) environmental incident reports; and (4) financial reports including unaudited semiannual financials within 60 days of the end of the period and annual audited financials within 120 days of the end of the reporting year.

The Agreement applies federal and state nondiscrimination laws, minority and woman business enterprise laws, and Buy Indiana presumptions, and it requires the concessionaire to maintain a drug-free workplace. The concessionaire must abide by all ethical requirements that apply to persons who have a business relationship with the state.

Explanation of Local Expenditures: *Prohibited Political Contributions:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately $44.

Explanation of Local Revenues: (Revised) *Northwest Indiana Regional Development Authority Payments:* Under current law, the NIRDA will receive up to $20 M from the IFA. The funds received may be used for any purpose of the NIRDA. As of December 2005, the IFA approved a $10 M allocation to the NIRDA in 2006 from the Toll Road General Reserve Fund. This bill removes this payment, but allows for a payment of $20 M to be appropriated to NIRDA from the Major Moves Construction Fund if IFA enters into a public-private agreement concerning the Indiana Toll Road. NIRDA shall pay at least $10 M of the distribution to an airport authority that is carrying out an airport expansion project. NIRDA's comprehensive strategic development plan must be reviewed by the Budget Committee and approved by the Director of the Office of Management and Budget before a payment may be made.

(Revised) *Counties Traversed by the Indiana Toll Road:* The projects or purposes that benefit a county traversed by the Indiana Toll Road may not be less than 34% of money received under a public-private agreement. (Assuming receipt of $3.85 B, this amount would be $1.31 B). The Budget Agency makes a determination of the amount of distributions required and must consider payments by the Major Moves Construction Fund under this statute including payments to the Motor Vehicle Highway Fund that are distributed to counties, cities, and towns; to NIRDA; to Steuben, LaGrange, LaPorte, Elkhart, St. Joseph, Porter, and Lake Counties; for the income tax credit; for state employee retirements; and the amounts allocated to the Bond Retirement Account and the Administration Account of the Toll Road Fund.

(Revised) *Local Major Moves Construction Funds:* Money paid to Steuben, LaGrange, LaPorte, Elkhart, St. Joseph, Porter, and Lake Counties from the MMCF (see above) will be distributed to the counties and cities and towns that are eligible to receive a distribution from the Motor Vehicle Highway Account in the same proportion as those funds are distributed. Money designated for an airport authority is excluded from the distribution.

(Revised) Each county, city, or town receiving a distribution is required to establish a local major moves construction fund to construct highways, roads, and bridges, or for the NIRDA, for the purposes allowed. The funds may also be used to fund economic development projects, match federal grants, or fund interlocal agreements. The funds will be distributed to the county auditor. The county fiscal body must consult with the county executive before appropriating money in the fund.

Motor Vehicle Highway Account: Counties, cities, and towns eligible for distributions from the Motor Vehicle Highway Account will be eligible to receive a proportional share of $75 M per year during FY 2007 and FY 2008, which is distributed from the Major Moves Construction Fund. The distribution will be in the same proportion as other funds that are distributed from the Account. Eligible counties, cities, and towns may use the funds for the purposes as currently allowed in law. An estimate of the amounts that will be distributed to each eligible county, city, or town is available through Legislative Services Agency.

State Agencies Affected: Department of Transportation; Indiana State Police; State Board of Accounts; State Treasurer; Auditor of State; Department of Personnel; Public Employees' Retirement Fund; Department of State Revenue; Budget Agency.

Local Agencies Affected: Trial courts; Local law enforcement agencies; All cities, towns, and counties.

Information Sources: *Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004; State of Indiana Comprehensive Annual Financial Report, FY 1999-FY 2003; Indiana Toll Road, Request for Toll Road Concessionaire Proposal;* Ryan Kitchell, Director Public Finance, 317-233-4334; Bureau of Economic Analysis, *Table 7.1, Selected Per Capita Product and Income Series in Current and Chained Dollars [Dollars] Seasonally adjusted at annual rates* available at www.bea.gov; Bureau of Labor Statistics, Consumer Price Index for all Urban Cities, available at www.bls.gov; Doug Todd of McCready & Keane, Inc., actuaries for PERF, 317 576-1508. STATS Indiana, *Annual Commuting Trends Profile Based on Indiana IT-40 Returns for Tax Year 2003*, http://www.stats.indiana.edu/commtframe.html; Indiana Department of Transportation, *2002 Interstate Annual Average Daily Traffic Volumes*; Thomas Sharp, Commissioner, Indiana Department of Transportation; *Treasurer of State Annual Report for FY 2005, Schedule B- Accrual Basis*.

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